

WAGANAKISING ODAWAK STATUTE
CRIMINAL and CRIMES

SECTION I. SHORT TITLE

This Statute may be cited as the “Criminal Statute,” and it repeals and replaces WOS 1997014.

SECTION II. PURPOSE

The purpose of this Statute is to set forth the Tribe’s jurisdiction and sovereign right to exercise its power to prohibit certain conduct as a matter of public policy within its territory.

SECTION III. DEFINITIONS

A. “Act” means some conduct or a series of related actions arising from and performed pursuant to a single design or purpose.

B. “Actual physical control” of a vehicle requires that the person be physically in or on the vehicle and have the capability to operate the vehicle, regardless of whether the person is actually operating the vehicle at the time.

C. “Adult” means any person over eighteen (18) years of age for purposes of criminal jurisdiction.

D. “Charges” means the complaint filed by the Prosecutor.

E. “Chief of Police” means the Chief of the Little Traverse Bay Bands of Odawa Indians Law Enforcement.

F. “Class 1 crime” means a crime that is punishable by up to three (3) years of imprisonment and up to \$5,000.00 in fines.

1 **G.** “Class 2 crime” means a crime that is punishable by up to one (1) year of imprisonment
2 and up to \$5,000.00 in fines.

3
4 **H.** “Class 3 crime” means a crime that is punishable by up to One hundred eighty (180) days
5 of imprisonment and up to \$2,000.00 in fines.

6
7 **I.** “Class 4 crime” means a crime that is punishable by ninety (90) days of imprisonment
8 and up to \$2,000 in fines.

9
10 **J.** “Class 5 crime” means a crime that is punishable by up to thirty (30) days of
11 imprisonment and up to \$1,000.00 in fines.

12
13 **K.** “Controlled substance” is defined and described in the Uniform Controlled Substances
14 Act, 21 U.S.C. Section 812, as updated, and includes any controlled substance defined in that
15 Act that that is mixed with or contains any of the following without prior authorization:

- 16
17 1. heroin;
18
19 2. cocaine, its salts, optical and geometric isomers, and salts of isomers;
20
21 3. ecgonine, its derivatives, their salts, isomers, and salts of isomers; or cocaine
22 base;
23
24 4. phencyclidine (PCP);
25
26 5. lysergic acid diethylamide (LSD);
27
28 6. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;
29
30 7. marihuana;
31
32 8. methamphetamine, its salts, isomers, and salts of its isomers.

33
34 **L.** “Conveyance” means any motor vehicle, ship, vessel, railroad car, trailer, aircraft or
35 sleeping car.

1
2 **M.** “Convicted” means that the offender has been subject to penal consequences based on the
3 conviction, however the conviction was styled. This applies to adult offenders and juveniles who
4 are prosecuted as adults.
5

6 **N.** “Department” means the Little Traverse Bay Bands of Odawa Indians Law Enforcement.
7

8 **O.** “Enterprise” means an ongoing organization, formal or informal, that functions both as a
9 continuing unit and has a common purpose of engaging in a course of conduct.
10

11 **P.** “Imprisonment” means incarceration pursuant to a conviction, regardless of the nature of
12 the institution in which the offender serves the sentence. This term must be interpreted broadly to
13 include, for example, confinement in a state “prison” as well as in a local or Tribal “jail.”
14

15 **Q.** “Indian” means a person who is a member of a federally recognized Indian Tribe.
16

17 **R.** “Indian Tribe” means any federally recognized Tribe.
18

19 **S.** “Knowingly” means with full knowledge and intent.
20

21 **T.** “Mental state of malice” means a person acts “maliciously” or “with malice” when that
22 person consciously formulates a plan to injure the person or property of another and takes steps
23 to carry out that plan.
24

25 **U.** “Mental state of intent” means a person acts intentionally or with intent with respect to
26 conduct when that person has the conscious desire to engage in certain conduct.
27

28 **V.** “Mental state of knowledge” means a person acts “knowingly” or “with knowledge”
29 when that person is aware of his or her actions and the probable consequences of those actions.
30

31 **W.** “Mental state of wanton or reckless” means a person acts “wantonly” or “recklessly”
32 when that person is aware, or should be aware, that certain conduct will endanger the health,
33 safety, or property of others but persists in engaging in the conduct despite the risks.
34

1 **X.** “Mental state of negligent” means a person acts “negligently” or “with neglect” when
2 that person acts in a manner that endangers the safety or property of others without exercising the
3 care that a reasonably prudent person would exercise under the same or similar circumstances.
4

5 **Y.** “Minor” or “Juvenile” means an individual who has not attained the age of eighteen (18)
6 years.
7

8 **Z.** “Motor Vehicle” means any car, truck, motorcycle, or other motor-operated vehicle.
9

10 **AA.** “Non-Indian” means any person who is not a member of a federally recognized Indian
11 Tribe.
12

13 **BB.** “Normal faculties” means the ability to perform the many regular mental and physical
14 acts of our daily lives. This includes, but is not limited to the ability to see, hear, walk, talk,
15 judge distances, drive a motor vehicle, make judgments, and act in emergencies.
16

17 **CC.** “Property” means anything of value and includes, but is not limited to, the following:
18

- 19 1. financial resources;
- 20
- 21 2. real property;
- 22
- 23 3. tangible and intangible personal property; and
- 24
- 25 4. services.
26

27 **DD.** “Real property” means land, anything erected on it, and any interests in the land.
28

29 **EE.** “Resides” means, with respect to an individual, the location of the individual’s home or
30 other place where the individual habitually lives.
31

32 **FF.** “Structure” means a building of any kind, either temporary or permanent, that has a roof
33 over it, and includes portable buildings.
34

1 **GG.** “Territorial jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means
2 “areas referenced in Public Law 103-324, 25 U.S.C. Section 1300k-2(b)(2)(A) as the boundaries
3 *of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third*
4 *and fourth’ of the Treaty of 1855, 11 Stat. 621.” Little Traverse Bay Bands Constitution, Article*
5 V(A)(1)(a).
6

7 **HH.** “Tribal Court” means the Little Traverse Bay Bands of Odawa Indians Tribal Court.
8

9 **II.** “Tribal member” means a person who is an enrolled citizen of the Little Traverse Bay
10 Bands of Odawa Indians.
11

12 **JJ.** “Tribe” means the Little Traverse Bay Bands of Odawa Indians.
13

14 **KK.** “Unlawful debt” means any money or other thing of value constituting principal or
15 interest of a debt that is legally unenforceable under the laws of the Little Traverse Bay Bands of
16 Odawa Indians in whole or in part because the debt was incurred or contracted in violation of the
17 law.
18

19 **LL.** “Vehicle” means every device in, upon, or by which any person or property is or may be
20 transported or drawn upon a highway, except devices used exclusively upon stationary rails or
21 tracks.
22

23 **MM.** “Vessel” means a boat that is subject to a license tax for operation and includes every
24 description of watercraft, barge, and airboat, other than a seaplane, on the water used or capable
25 of being used as a means of transportation on water.
26

27 **NN.** “Willfully” means intentionally, knowingly, and purposely.
28
29

30 **SECTION IV. CRIMINAL JURISDICTION** 31

32 **A.** Criminal jurisdiction of the Tribe extends to adult LTBB citizens and adult citizens of
33 Federally Recognized Tribes, however, upon motion of the Tribal Prosecutor the Judge has the
34 discretion to try a minor as an adult within the jurisdictions of Violence Against Women
35 Reauthorization Act of 2013 (VAWA).

1
2 **B.** The Violence Against Women Reauthorization Act of 2013 (VAWA), S.47, 113th
3 Congress, 2013-2015, was reauthorized and amended by Congress in 2013 affirming the tribes'
4 inherent power to exercise "special domestic violence criminal jurisdiction" (SDVCJ) over all
5 persons, regardless of their Indian or non-Indian status. Under VAWA LTBB has limited
6 criminal jurisdiction over non-Indian defendants only for the following crimes: dating violence,
7 domestic violence, violations of protection orders, and other crimes when committed in the
8 context of a dating or domestic relationship. The limited jurisdiction applies where the victim is
9 an Indian, the defendant lives or works in the territorial jurisdiction of LTBB, or the defendant's
10 spouse, intimate partner, or dating partner is an Indian. Such special jurisdiction may only be
11 exercised when the defendant is charged with one (1) of the crimes in the Domestic Violence
12 Statute and may be imprisoned up to three (3) years, a fine of up to \$15,000.00, in accordance
13 with TLOA jurisdiction.
14

15 **C.** The Indian Civil Rights Act (ICRA), 25 U.S.C. Section 1302, was enacted by Congress
16 in 1968. The Tribe's jurisdiction is limited to punishments that may impose up to a one (1) year
17 jail term and a fine up to \$5,000.00.
18

19 **D.** The Tribal Law and Order Act (TLOA), PL 111-211, was enacted by Congress in 2013.
20 The Tribe's jurisdiction is extended to punishments that may impose up three (3) year
21 imprisonment and a fine up to \$15,000.00, up the enactment of a Tribal Council Resolution.
22
23

24 **SECTION V. REQUIREMENTS FOR SEARCHES AND SEIZURES**

25

26 **A.** A search warrant may be issued by the Court authorizing law enforcement to search a
27 specified place for evidence even without the occupant's consent, provided the following
28 requirements are met:
29

- 30 **1.** By affidavit, law enforcement shall show that Probable cause that a crime has
31 been or is being committed exists and believe a search is justified when, under the totality
32 of the circumstances, a reasonable person would conclude that evidence of a crime will
33 be found where law enforcement want to search.
34

2. All search warrants issued must contain sufficient information that particularly describes the place to be searched and describe the items to be seized in such a way that limits the legitimate scope of the search both spatially and temporally.

B. After executing a search warrant, law enforcement shall return a copy of the search warrant to the Court, and include a list of what was seized and a copy of the receipt for seized property that was given to the person searched.

C. Law enforcement may briefly detain a person when the officer has a reasonable and articulable suspicion that crime is afoot in order to confirm or dispel the officer's suspicion. If an officer has a reasonable and articulable suspicion that the suspect is presently armed and dangerous, the officer may conduct a limited search of the suspect's outer clothing for the limited purpose of looking for weapons.

SECTION VI. CHARGES and ARRAIGNMENT

A. Only the Prosecutor may bring forth Charges for crimes committed under this Statute.

B. Charges must include the following:

1. The name and address of the Court.

2. The name of the defendant, if known, or some other name if not known, plus whatever description of the defendant is known.

3. The signature of the prosecutor and his or her typewritten name.

4. Facts that support the Jurisdiction of the Tribe.

5. The alleged crime committed, along with the Statute and Code section of the alleged crime, and the minimum and maximum possible penalty. Also, a statement by the Prosecutor as to whether or not the punishment of imprisonment, in accordance with the Sentencing Guidelines, will be requested by the Prosecutor.

6. The location where the offense was committed.
 7. A short, concise statement of the alleged act or omission.
 8. The person against whom, or against whose property, the offense was committed.
 9. The approximate date and time of the commission of the offense.
 10. The designation of Indian or non-Indian status.
- C. Charges must be filed with the Court within seventy-two (72) hours if the Defendant is being held in law enforcement custody.
- D. An arraignment must be conducted in open court, upon the appearance of the accused in response to a summons or citation or, if the accused was arrested and confined, within seventy-two (72) hours and must consist of the following:
1. Ensuring that the defendant has a copy of the Charges.
 2. Reading of rights, including the right to be represented by an attorney, as follows:
 - a. To testify on his or her own behalf, or to refuse to testify regarding the charge against him or her. However, once a defendant takes the stand to testify on any matter relevant to the immediate proceeding, he or she shall be deemed to have waived all right to exercise his or her right to remain silent and may be cross-examined.
 - b. To confront and cross-examine all witnesses.
 - c. To compel by subpoena the attendance of witnesses.
 - d. To have a jury trial of not less than seven (7) persons for any offense punishable by imprisonment, if the Charges include a statement by the Prosecutor requesting the punishment of imprisonment.

e. To have a speedy and public trial. The defendant and the Tribe are entitled to a speedy trial and resolution of all matters before the Court. The trial court has the responsibility to establish and control a trial calendar. In assigning cases to the calendar, and insofar as it is practical, the trial of criminal cases must be given preference over the trial of civil cases, and the trial of defendants in custody must be given preference over other criminal cases.

f. To appeal consistent with LTBB's Rules of Appellate Procedures.

g. Not to be prosecuted by the Tribe twice for the same offense.

h. To a fair trial and due process of law.

3. Reading of the charges; and then

4. Asking the defendant to enter a plea of guilty, not guilty, or no contest.

SECTION VII. REQUIREMENTS FOR CONVICTION

A. Culpability. A person must not be guilty of an offense unless that person acted intentionally, maliciously, knowingly, recklessly or negligently as the law requires with respect to each material element of the offense. However, any material element of an offense that does not require a mental state may be established by proving that the person participated in the prohibited conduct regardless of that person's state of mind.

B. Burden of Proof. No person may be convicted of an offense unless the Tribe proves each element of the offense beyond a reasonable doubt. Reasonable doubt is not a mere possible doubt, a speculative, imaginary or forced doubt. If each element is not proven beyond a reasonable doubt, the Tribe has not met its burden of proof.

C. Intoxication. Intoxication is not a defense unless it negates an element of the offense. Self-induced intoxication cannot negate the element of recklessness or negligence.

1 **D. Statute of Limitations.** No person may be prosecuted, tried, or punished for any criminal
2 offense unless the prosecution is initiated within one (1) year after both of the following
3 conditions are met:

- 4
- 5 1. Discovery that an offense has been committed; and
- 6
- 7 2. Discovery of the identity of the person who allegedly committed the offense.
- 8
- 9 3. The Court may suspend the time limitation for the amount of time that the
10 Defendant no longer within the Tribe's Jurisdiction.
- 11

12 **E. Multiple Counts.** When the conduct of a defendant establishes the commission of more
13 than one offense, the defendant may be prosecuted for each offense, unless:

- 14
- 15 1. One offense consists only of an attempt to commit the other;
- 16
- 17 2. Inconsistent findings of fact are required to establish commission of the offenses;
- 18 or
- 19
- 20 3. The offenses differ only in that one prohibits a designated kind of conduct
21 generally, and the other prohibits a specific instance of such conduct.
- 22
- 23

24 **SECTION VIII. AFFIRMATIVE DEFENSES AND ALIBI**

25

26 **A. Duress.** Duress is an affirmative defense that the defendant was coerced against his or
27 her will by the use of, or threatened use of, unlawful force against the defendant's person or the
28 person of another. The coercion must be such that a person of reasonable firmness would be
29 unable to resist.

30

31 **B. Protection of Self, Property, or Other Person.** The use of reasonable force toward
32 another person is justified and is an affirmative defense if the following requirements are met:

- 33
- 34 1. the force is directed toward someone who is using unlawful force; and
- 35

2. the person using such force reasonably believes the use of force is necessary for his or her protection or that of a third person.

C. Alibi. The defense of alibi is used when the accused was somewhere else when the crime was committed, and must be treated procedurally as an affirmative defense.

D. Mental Infirmary, Disease, or Defect. Mental Infirmary, disease, or defect is an affirmative defense that because of a condition the defendant did not know what he or she was doing or the consequences of those actions or although the defendant knew what he or she was, but did not know it was wrong.

E. Lawful Possession of a Controlled Substance. Lawful possession of a controlled substance is an affirmative defense when the substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice.

F. Entrapment. Entrapment is an affirmative defense if the defendant:

1. Was induced or encouraged to engage in the conduct of the crime charged for purposes of obtaining evidence of the commission of a crime;
2. Engaged in conduct as a direct result of the inducement or encouragement;
3. The person who induced or encouraged the defendant was a law enforcement officer or a person acting as an agent of a law enforcement office;
4. The person who induced or encouraged the defendant used methods of persuasion or inducement that created a substantial risk that the crime would be committed by a person other than one who was ready to commit it; and
5. The defendant was not a person who was ready to commit the crime.

G. Self-Defense. Self-defense is an affirmative defense if the death or injury to the victim resulted from the justifiable use of deadly force where the defendant reasonably believed that the force was necessary to prevent imminent death or great bodily harm to him or herself.

1
2 **H. Procedures for Raising an Affirmative Defense.** The procedures for raising and
3 pleading affirmative defenses are specified by Court Rule.
4

5 **I. Burden of Proof Required for an Affirmative Defense.** Affirmative defenses are
6 proven under the preponderance of evidence standard. This means that the fact finder must be
7 persuaded by the defendant that each element of the affirmative defense was more probable than
8 not. Once the defendant meets this burden, the burden shifts to the Tribe to disprove the
9 affirmative defense beyond a reasonable doubt.
10

11
12 **SECTION IX. COUNSEL**
13

14 **A. Representation of Accused.** Any person accused of an offense under this Statute may
15 represent him or herself before the Tribal Court, or may be represented by a person duly licensed
16 to practice before the Tribal Court at the his own expense, unless otherwise indicated by law or
17 court rule.
18

19
20 **SECTION X. SENTENCING GUIDELINES AND SENTENCING**
21

22 **A. Sentencing Guidelines.** The Court shall develop sentencing guidelines to be approved
23 and published by the Judiciary that provide a range of minimum to maximum time of
24 imprisonment, along with minimum and maximum range of fines. Sentencing guidelines, at a
25 minimum, must be based on and include the following:
26

- 27 1. classifications of the crime consistent with this Statute and a statement as to
28 whether or not a crime includes the punishment of imprisonment; and the minimum and
29 maximum length of time of imprisonment;
30
- 31 2. the defendant's relationship to the criminal justice system, such as whether the
32 defendant is currently incarcerated, on parole or probation, or has no relationship;
33
- 34 3. whether the defendant is a repeat or habitual offender, including the number of
35 previously committed crimes and the classifications of the previous crimes;

4. if a weapon was used, the type of weapon used and the manner in which the weapon was used;
5. the degree of physical injury to the victim;
6. the degree of psychological injury to the victim;
7. the number of victims involved;
8. the degree of the defendant's intent;
9. any contemporaneous criminal acts;
10. whether the crime is part of a pattern of criminal behavior;
11. the value of any property obtained, damaged, or destroyed; and
12. the degree of intoxication during the criminal act.

B. The Court may include in the guidelines appropriate rehabilitative or probationary terms as remedial measures, such as batter's intervention, inpatient or outpatient drug treatment or participation in a drug treatment court, probation with any probation conditions required or authorized by law, residential probation, probation with jail, probation with special alternative incarceration, mental health treatment, mental health or substance abuse counseling, jail with work or school release, jail with or without authorization for day parole, participation in a community corrections program, community service, house arrest, or electronic monitoring, provided that it defines what facts and circumstances would allow for the remedial measures to be taken into consideration.

C. Sentencing. When making sentencing determinations, the Court shall follow the sentencing guidelines and consider the type and seriousness of the crime, including any mitigating and/or aggravating circumstances, as well as the potential helpfulness of rehabilitative services. Deviation from the sentencing guidelines would only occur if the Court has a

1 substantial and compelling reason for that departure and states on the record the reasons for
2 departure from the guidelines.

3
4 **D. Mitigating and Aggravating Circumstances.** The Court may consider the following
5 aggravating and mitigating circumstances to ensure a just and fair sentence:

6
7 1. Mitigating circumstances include the following:

8
9 a. the absence of any violent activity during the commission of the crime;

10
11 b. the absence of any weapons used during the commission of the crime;

12
13 c. the defendant was under an extreme mental or emotional disorder or
14 delusion;

15
16 d. the defendant committed the crime under a reasonable belief of moral
17 justification or necessity;

18
19 e. the defendant acted under duress or substantial domination of another
20 person;

21
22 f. the age and maturity of the defendant;

23
24 g. the defendant was an accomplice and had only minor participation in the
25 commission of the crime;

26
27 h. the amount of property damage caused was less than \$1,000.00;

28
29 i. the value of property or money taken was less than \$1,000.00.

30
31 2. Aggravating circumstances include the following:

32
33 a. the presence of any violent activity during the commission of the crime;

34
35 b. the presence of any weapons used during the commission of the crime;

- c. the defendant was voluntarily intoxicated during the commission of the crime;
- d. the defendant is a repeat or habitual offender;
- e. the defendant was an accomplice and had substantial participation in the commission of the crime;
- f. the amount of property damage caused was greater than \$1,000.00;
- g. the value of property or money taken or converted was greater than \$1,000.00.

E. Forfeiture of Weapons. The Court may order forfeiture of the firearms and ammunition.

F. Victim's Impact Statement. Prior to sentencing, the Court must inform the victim(s) of their right to submit a written statement to the Court detailing the physical, material, and emotional damages that they suffered as a result of the offender's actions. The Judge has discretion to allow oral testimony regarding such damages in addition to or in lieu of the written statement.

SECTION XI. INCHOATE CRIMES

A. Attempt to Commit Crime [Shall be on class lower than the underlying offense].

1. To prove the crime of Attempt to Commit Crime, the Tribe must prove beyond a reasonable doubt that:

- a. the defendant did some act toward committing the crime; and
- b. the act went beyond just thinking or talking about it.

2. It is not an attempt to commit a crime if the defendant abandoned his or her attempt to commit the offense or otherwise prevented its commission under circumstances indicating a complete and voluntary renunciation of his or her criminal purpose.

3. The defendant may still be guilty of an attempt to commit a crime if the defendant would have committed the crime except that someone prevented the defendant from committing the crime or the defendant failed to commit the crime.

B. Criminal Solicitation [Class 1].

1. To prove the crime of Criminal Solicitation, the Tribe must prove beyond a reasonable doubt that:

- a. the defendant solicited a person to commit an offense; and
- b. the defendant commanded, encouraged, hired or requested a person to engage in specific conduct that would constitute the commission of the solicited offense or an attempt to commit the solicited offense.

2. It is not necessary that the defendant do any act in furtherance of the offense solicited.

3. **Definition.** "Solicit" means to earnestly ask or try to induce the person solicited to do the thing solicited.

4. **Defense.** It is a defense to the charge of Criminal Solicitation if the defendant, after soliciting a person to commit the solicited offense, persuades the person not to commit the offense or otherwise prevents the commission of the offense.

C. Criminal Conspiracy [Class 1].

1. To prove the crime of Criminal Conspiracy, the Tribe must prove beyond a reasonable doubt that:

1
2 a. the defendant intended for the offense to be committed; and

3
4 b. the defendant, in order to carry out his or her intent, agreed, conspired,
5 combined or confederated with the alleged person(s) to cause the offense to be
6 committed by them individually or together or by some other person.

7
8 2. It is not necessary that the agreement, conspiracy, combination, or confederation
9 to commit the offense be expressed in any particular words or that words pass between
10 the conspirators.

11
12 3. It is not necessary that the defendant do any act in furtherance of the offense
13 conspired.

14
15 4. **Defense.** It is a defense to the charge of Criminal Conspiracy that the defendant,
16 after conspiring with one or more persons to commit the offense, persuades the alleged
17 person or persons not to commit the offense or otherwise prevented the commission of
18 the offense.

19
20
21 **SECTION XII. ATTEMPTED HOMICIDE**

22
23 **A. Attempted Premeditated Murder [Class 1].**

24
25 1. To prove the crime of Attempted Premeditated Murder, the Tribe must prove
26 beyond a reasonable doubt that:

27
28 a. the defendant did some act intended to cause the death of the victim that
29 went beyond just thinking or talking about it;

30
31 b. the defendant acted with a premeditated design to kill the victim; and

32
33 c. the act would have resulted in the death of the victim except that someone
34 prevented the defendant from killing the victim or the defendant failed to do so.
35

1 **2. Definition.** “Premeditated” means that there was a conscious decision to kill; that
2 there was time for reflection by the defendant; and that the premeditated intent to kill
3 existed before the act was committed.
4

5 **3. Defense.** It is a defense to Attempted Premeditated Murder, if the defendant
6 abandoned the attempt to commit the offense or otherwise prevented its commission
7 under circumstances that indicate a complete and voluntary renunciation of his or her
8 criminal purpose.
9

10 **B. Attempted Murder [Class 1].**
11

12 **1.** To prove the crime of Attempted Second Degree Murder, the Tribe must prove
13 beyond a reasonable doubt that:
14

15 **a.** the defendant intentionally committed an act that would have resulted in
16 the death of the victim, except that someone prevented the defendant from killing
17 the victim or the defendant failed to do so; and
18

19 **b.** the act was imminently dangerous to another and demonstrating a
20 depraved mind without regard fro human life.
21

22 **2.** It is not necessary for the Tribe to prove the defendant had intent to cause death.
23

24 **3. Definitions.** “Imminently dangerous to another and demonstrating a depraved
25 mind” means an act or series of acts that:
26

27 **a.** a person of ordinary judgment would know is reasonably certain to kill or
28 do serious bodily injury to another;
29

30 **b.** is done from ill will, hatred, spite, or an evil intent; and
31

32 **c.** is of such a nature that the act itself indicates an indifference to human
33 life.
34

1 **4. Defense.** It is a defense to an Attempt to Commit Murder, if the defendant
2 abandoned the attempt to commit the offense or otherwise prevented its commission
3 under circumstances indicating a complete and voluntary renunciation of his or her
4 criminal purpose.
5

6 **C. Attempted Felony [Class 1] Murder.**
7

8 **1.** To prove the crime of Attempted Felony [Class 1] Murder, the Tribe must prove
9 the following beyond a reasonable doubt:
10

11 **a.** the defendant committed or attempted to commit a crime;
12

13 **b.** while engaged in the commission, attempted commission, or escape from
14 the immediate scene of the crime, the defendant committed, aided or abetted an
15 intentional act that is not an essential element of the alleged crime; and
16

17 **c.** this intentional act could have but did not cause the death of the victim.
18

19 **2.** It is not necessary for the Tribe to prove that the defendant had a premeditated
20 design or intent to kill.
21

22 **D. Attempted Felony [Class 1] Murder, Injury Caused by Another.**
23

24 **1.** To prove the crime of Attempted Felony [Class 1] Murder Injury Caused by
25 Another, the Tribe must prove beyond a reasonable doubt that:
26

27 **a.** the defendant committed or attempted to commit an offense; and
28

29 **b.** the victim was injured during the commission or attempted commission of
30 an escape from the immediate scene of the alleged offense by an individual other
31 than the defendant.
32

33 **2.** It is not necessary for the Tribe to prove that the defendant had a premeditated
34 design or intent to kill.
35

1 **E. Attempted Voluntary Manslaughter [Class 1].**

2
3 **1.** To prove the crime of Attempted Voluntary Manslaughter, the Tribe must prove
4 the following element beyond a reasonable doubt:

5
6 **a.** the defendant committed or procured an act that was intended to cause the
7 death of the victim; and

8
9 **b.** the act would have resulted in the death of the victim except that someone
10 prevented the defendant from killing the victim or the defendant failed to
11 do so.

12
13 **2. Definition.** “Procure” means to persuade, induce, prevail upon, or cause a person
14 to do something.

15
16 **3. Defense.** It is a defense to Attempted Voluntary Manslaughter if the killing was
17 abandoned, excusable, or justifiable.

18
19 **a. Abandonment Defense.** It is a defense if the defendant abandoned the
20 attempt to commit the offense or otherwise prevented its commission under
21 circumstances indicating a complete and voluntary renunciation of his or her
22 criminal purpose.

23
24 **b. Excusable Killing Defense.** The killing a human being is excusable, and
25 therefore lawful, under any of the following circumstances:

26
27 **i.** the killing was committed by accident and misfortune in doing
28 any lawful act by lawful means with usual ordinary caution and
29 without any unlawful intent;

30
31 **ii.** the killing occurred by accident and misfortune in the heat of
32 passion, upon any sudden and sufficient provocation; or
33

1 iii. the killing was committed by accident and misfortune resulting
2 from a sudden combat, if a dangerous weapon is not used and the killing
3 is not done in a cruel or unusual manner.
4

5 c. **Justifiable Killing Defense.** The killing of a human being is justifiable,
6 and therefore lawful, if necessarily done while resisting an attempt to murder or
7 commit a Class 1 crime upon the defendant or to commit a Class 1 crime in any
8 dwelling in which the defendant was at the time of the killing.
9

10 11 **SECTION XIII. HOMICIDE**

12 13 **A. Premeditated Murder [Class 1].**

14 1. To prove the crime of Premeditated Murder, the Tribe must prove beyond a
15 reasonable doubt that:

16
17 a. the victim is dead;

18
19 b. the death was caused by the defendant's criminal act; and

20
21 c. the defendant premeditated killing the victim.
22

23 2. If the defendant has a premeditated design to kill one person and in attempting to
24 kill that person actually kills another person, the killing is premeditated.

25
26 3. **Definition.** "Premeditated" means that there was a conscious decision to kill; that
27 there was time for reflection by the defendant; and that the premeditated intent to kill
28 existed before the act was committed.
29

30 **B. Murder [Class 1].**

31 1. To prove the crime of Murder, the Tribe must prove beyond a reasonable doubt
32 that:

33
34 a. the victim is dead;
35

1 **b.** the death was caused by the criminal act of the defendant; and

2
3 **c.** there was an unlawful killing of the victim by an act imminently
4 dangerous to another and demonstrating a depraved mind without regard for
5 human life.

6
7 **2.** It is not necessary for the Tribe to prove that the defendant had intent to cause
8 death.

9
10 **3. Definition.** “Imminently dangerous to another and demonstrating a depraved
11 mind” means an act or series of acts that:

12
13 **a.** a person of ordinary judgment would know is reasonably certain to kill or
14 do serious bodily injury to another;

15
16 **b.** is done from ill will, hatred, spite, or an evil intent; and

17
18 **c.** is of such a nature that the act itself indicates and indifference to human
19 life.

20
21 **C. Felony [Class 1] Murder.**

22
23 **1.** To prove the crime of Felony [Class 1] Murder, the Tribe must prove beyond a
24 reasonable doubt that:

25
26 **a.** the victim is dead;

27
28 **b.** the death occurred as a consequence of and while the defendant was
29 engaged in the commission, attempted commission, or aiding and abetting of the
30 alleged crime; and

31
32 **c.** the victim was killed by:

33
34 **i.** the defendant;

1 ii. an accomplice; or

2
3 iii. any another person.

4
5 2. It is not necessary for the Tribe to prove that the defendant had a premeditated
6 design or intent to kill.

7
8 **D. Manslaughter [Class 1].**

9
10 1. To prove the crime of Manslaughter, the Tribe must prove beyond a reasonable
11 doubt that:

12
13 a. the victim is dead; and

14
15 b. the defendant intentionally committed an act that caused the death of the
16 victim; the defendant intentionally procured an act that caused the death of the
17 victim; or the defendant's culpable negligence caused the death of the victim.

18
19 2. It is not necessary for the Tribe to prove that the defendant had intent to cause
20 death, only intent to commit an act that was not justified or excusable and that caused
21 death.

22
23 3. **Definition.** "Culpable negligence" means that there was a breach of one's duty to
24 act reasonably towards others by gross or flagrant conduct. This includes conduct that
25 shows a reckless disregard or indifference for human life or for the safety of others.

26
27 4. **Defenses.** It is a defense to Manslaughter, if the killing was excusable or
28 justifiable.

29
30 a. **Excusable Killing Defense.** The killing of a human being is excusable,
31 and therefore lawful, under any of the following circumstances:

32
33 i. the killing was committed by accident and misfortune in doing any
34 lawful act by lawful means with usual ordinary caution and without any
35 unlawful intent;

1
2 ii. the killing occurred by accident and misfortune in the heat of
3 passion, upon any sudden and sufficient provocation; or
4

5 iii. the killing was committed by accident and misfortune resulting
6 from a sudden combat, so long as a dangerous weapon was not used and
7 the killing was not done in a cruel or unusual manner.
8

9 **b. Justifiable Killing Defense.** The killing of a human being is justifiable,
10 and therefore lawful, if necessarily done while resisting an attempt to murder or
11 commit a Class 1 crime upon the defendant, or to commit a Class 1 crime in any
12 dwelling in which the defendant was at the time of the killing.
13

14 **E. Vehicular or Vessel Manslaughter [Class 1].**
15

16 **1.** To prove the crime of Vehicular or Vessel Manslaughter, the Tribe must prove the
17 following beyond a reasonable doubt:
18

19 **a.** the victim is dead;
20

21 **b.** the death was caused by the defendant's operation of a motor vehicle or
22 vessel; and
23

24 **c.** the defendant operated the motor vehicle or vessel in a reckless or
25 careless manner likely to cause the death of or great bodily harm to another
26 person. [or while intoxicated/under the influence of an alcoholic beverage or
27 controlled substance]
28

29 **2.** It is not necessary for the Tribe to prove that the defendant intended to harm or
30 injure the victim or any other person.
31
32
33
34
35

1 **SECTION XIV. DOMESTIC VIOLENCE AND SEX OFFENSES**

2
3 **A. Domestic Violence Crimes.** See Domestic Violence Statute, WOTCL #

4
5 **B. Sex Offenses.** See WOTCL 9.210(A)-(H).

6
7
8 **SECTION XV. ASSAULT, BATTERY, AND STALKING**

9
10 **A. Aggravated Assault [Class 2].**

11
12 **1.** To prove the crime of Aggravated Assault, the Tribe must prove beyond a
13 reasonable doubt that:

14
15 **a.** the defendant intentionally and unlawfully threatened to do violence to the
16 victim either by verbal or physical conduct;

17
18 **b.** at the time, the defendant appeared to have the ability to carry out the
19 threat;

20
21 **c.** the victim had a well-founded fear that the violence was about to take
22 place; and

23
24 **d.** the assault was made using a deadly weapon or with the intent to commit
25 an offense upon the victim.

26
27 **2.** It is not necessary for the Tribe to prove that the defendant had intent to kill.

28
29 **3. Definition.** “Deadly weapon” means any weapon that is used or threatened to be
30 used in a way that is likely to produce death or great bodily harm.

31
32 **B. Assault [Class 2].** To prove the crime of Assault, the Tribe must prove beyond a
33 reasonable doubt that:

1. the defendant intentionally and unlawfully threatened to do violence to the victim either by verbal or physical conduct;
2. at the time, the defendant appeared to have the ability to carry out the threat; and
3. the victim had a well-founded fear that the violence was about to take place.

C. Aggravated Battery [Class 2].

1. To prove the crime of Aggravated Battery, the Tribe must prove beyond a reasonable doubt that the defendant:
 - a. intentionally touched, struck, or caused bodily harm to the victim;
 - b. intentionally or knowingly caused the victim great bodily harm, permanent disability, or permanent disfigurement; and
 - c. used a deadly weapon.
2. **Definition.** “Deadly weapon” means any weapon that is used or threatened to be used in a way that is likely to produce death or great bodily harm.

D. Battery [Class 2].

1. To prove the crime of Battery, the Tribe must prove beyond a reasonable doubt that:
 - a. the defendant intentionally touched, struck, or caused bodily harm to the victim;
 - b. the defendant’s actions were done against the victim’s will; and
 - c. the defendant intentionally caused bodily harm to the victim.
2. It is not necessary for the defendant to cause substantial harm to the victim, but only that the defendant’s actions caused some harm.

1
2 **E. Aggravated Stalking [Class 2].**
3

4 **1.** To prove the crime of Aggravated Stalking, the Tribe must prove beyond a
5 reasonable doubt that the defendant:

6
7 **a.** willfully, maliciously, and repeatedly followed, harassed or cyber-stalked
8 the victim; and
9

10 **b.** the defendant made a credible threat with the intent to place the victim in
11 reasonable fear of death or bodily injury to himself or herself or the victim's
12 child, sibling, spouse, parent or dependant.
13

14 **2. Definitions.**
15

16 **a.** "Harass" means to engage in a course of conduct directed at a specific
17 person that causes substantial emotional distress in such person and serves no
18 legitimate purpose.
19

20 **b.** "Cyber-stalk" means to engage in a course of conduct to communicate
21 words, images or language by or through electronic means directed at a specific
22 person, causing substantial emotional distress to that person and serving no
23 legitimate purpose.
24

25 **c.** "Credible threat" means a threat made with the intent to cause the person
26 who is the target of the threat to reasonably fear for his or her safety. The threat
27 must be directed at causing bodily injury or death to a person.
28

29 **F. Stalking [Class 2].**
30

31 To prove the crime of Stalking, the Tribe must prove beyond a reasonable doubt that the
32 defendant's conduct involving repeated or continuing harassment or cyber-stalking of another
33 individual that would cause a reasonable person to feel terrorized, frightened, intimidated,
34 threatened, harassed, or molested and that actually causes the victim to feel terrorized,
35 frightened, intimidated, threatened, harassed, or molested.

1
2 **1. Definitions.**
3

4 **a.** “Harass” means to engage in a course of conduct directed at a specific
5 person that causes substantial emotional distress in that person and serves no
6 legitimate purpose.
7

8 **b.** “Cyber-stalking” means to engage in a course of conduct to communicate
9 words, images, or language by or through electronic means directed at a specific
10 person, causing substantial emotional distress to that person and serving no
11 legitimate purpose.
12
13

14 **SECTION XVI. KIDNAPPING and FALSE IMPRISONMENT**
15

16 **A. Kidnapping [Class 2].**
17

18 **1.** To prove the crime of Kidnapping, the Tribe must prove beyond a reasonable
19 doubt that the defendant:
20

21 **a.** confined or abducted the victim against his or her will by force or threat;
22

23 **b.** had no lawful authority; and
24

25 **c.** acted with intent to:
26

27 **i.** hold for ransom, reward, shield, or hostage;
28

29 **ii.** commit or facilitate commission of another offense;
30

31 **iii.** inflict bodily harm upon or to terrorize the victim or another
32 person; or
33

34 **iv.** interfere with the performance of any governmental or political
35 function.

1
2 **2.** The confinement or abduction must not:

3
4 **a.** be slight, inconsequential, or incidental to another offense;

5
6 **b.** be of the kind inherent in the nature of another offense; or

7
8 **c.** have some significance independent of another offense in that it makes the
9 other offense substantially easier to commit or substantially lessens the risk of
10 detection.

11
12 **3.** Confinement of a child under the age of thirteen is against the child's will if the
13 confinement is without the consent of the child's parent or legal guardian.

14
15 **B. False Imprisonment [Class 2].**

16
17 **1.** To prove the crime of False Imprisonment, the Tribe must prove beyond a
18 reasonable doubt that the defendant:

19
20 **a.** confined, abducted or imprisoned the victim against his or her will by
21 force or threat; and

22
23 **b.** the defendant had no lawful authority.

24
25 **2.** Confinement of a child under the age of thirteen is against the child's will if the
26 confinement is without the consent of the child's parent or legal guardian.

27
28
29 **SECTION XVII. WEAPONS and EXPLOSIVES**

30
31 **A. Carrying a Deadly Weapon without a License [Class 3].** To prove the crime of
32 Carrying a Deadly Weapon without a License, the Tribe must prove beyond a reasonable doubt
33 that:

34
35 **1.** the defendant was carrying a deadly weapon; and

1
2 2. the defendant did not have a license issued by either the Little Traverse Bay
3 Bands of Odawa Indians or the State of Michigan.
4

5 **B. Unlawful use of a Weapon [Class 3].**
6

7 1. To prove the crime of Unlawful use of a Weapon, the Tribe must prove beyond a
8 reasonable doubt that the defendant:
9

10 a. discharged a firearm in the proximity of a building or vehicle so as to
11 knowingly or recklessly endanger a person or property;
12

13 b. carried a firearm while intoxicated;
14

15 c. knowingly or recklessly handled or used a firearm or other weapon in a
16 way that endangered the safety of another; or
17

18 d. carried a firearm or other weapon with unlawful intent.
19

20 2. **Definition.** “Intoxicated” means being under the influence of alcohol or other
21 controlled substance such that one’s normal faculties are impaired.
22

23 **C. Dangerous use of Explosives [Class 4].** To prove the crime of Dangerous use of
24 Explosives, the Tribe must prove beyond a reasonable doubt that the defendant either:
25

26 1. intended to injure, intimidate or terrify another or damage another’s property, and
27 maliciously exploded or attempted to explode the explosive; or
28

29 2. failed to use reasonable care in the placement or manner of exploding or
30 attempting to explode the explosive, and that conduct resulted in an injury to another or
31 to the property of another.
32

33 **D. False Reports of Explosive [Class 4].** To prove the crime of False Reports of Explosive,
34 the Tribe must prove beyond a reasonable doubt that:
35

1. the defendant made a false report concerning the placing or planting of an alleged explosive to the person receiving the report;
2. the defendant knew the report was false; and
3. the report was made with intent to deceive, mislead or otherwise misinform the person receiving the report.

SECTION XVIII. ARSON and CRIMINAL MISCHIEF

A. Arson [Class 2]. To prove the crime of Arson, the Tribe must prove beyond a reasonable doubt that the defendant:

1. damaged or caused to be damaged a structure by fire or explosion; and
2. did so willfully and unlawfully or did so while engaged in the commission of another offense.

B. Fire Bomb [Class 3].

1. To prove the crime of Fire Bomb, the Tribe must prove beyond a reasonable doubt that:

- a. the defendant manufactured, possessed, transported, disposed of, or transferred to another person a fire bomb; and
- b. at the time, the defendant intended that the fire bomb would be willfully and unlawfully used to damage any structure or property by fire or explosion.

2. **Definition.** “Fire bomb” means a container holding flammable or combustible liquid, or any incendiary chemical mixture or compound, having a device capable of being ignited; but does not include devices that are commercially manufactured for the purpose of illumination, heating, or cooking.

1
2
3
4 **C. Criminal Mischief [Class 3].**
5

6 **1.** To prove the crime of Criminal Mischief, the Tribe must prove beyond a
7 reasonable doubt that:

- 8
9 **a.** the defendant injured or damaged real or personal property;
10
11 **b.** the property injured or damaged did not belong to the defendant; and
12
13 **c.** the injury or damage was done willfully and maliciously.
14

15 **2. Definition.** “Maliciously” means wrongfully, intentionally, without legal
16 justification or excuse, and with the knowledge that injury or damage will or may be
17 caused to another person or the property of another person.
18
19

20 **SECTION XIX. COMPUTER CRIMES**
21

22 **A. Computer Fraud [Class 2].** To prove the crime of Computer Fraud, the Tribe must
23 prove beyond a reasonable doubt that the defendant used a computer or computer network
24 without authority, and:
25

- 26 **1.** obtained property or services by false pretenses;
27
28 **2.** converted the property of another; or
29
30 **3.** embezzled or committed larceny.
31

32 **B. Transmission of Unsolicited Commercial Electronic Mail (SPAM) [Class 5].**
33

34 **1.** To prove the crime of Transmission of Unsolicited Commercial Electronic Mail
35 (SPAM), the Tribe must prove beyond a reasonable doubt that the defendant:

1
2 **a.** used a computer or computer network with the intent to falsify or forge
3 electronic mail transmission information or other routing information in
4 connection with the transmission of spam through or into the computer network of
5 an electronic mail service provider or its subscribers; or
6

7 **b.** knowingly sold, gave or otherwise distributed or possessed with the intent
8 to sell, give, or distribute software that:
9

10 **i.** is primarily designed or produced for the purpose of facilitating or
11 enabling the falsification of the transmission information or other routing
12 information of spam;
13

14 **ii.** has only limited commercially significant purpose or use other
15 than to facilitate or enable the falsification of the transmission information
16 or other routing information of spam; or
17

18 **iii.** is marketed by the defendant acting alone or with another for use
19 in facilitating or enabling the falsification of the transmission information
20 or other routing information of spam.
21

22 **2. Definitions.**

23
24 **a.** “Electronic mail service provider” means any person who:
25

26 **i.** is an intermediary in sending or receiving electronic mail; and
27

28 **ii.** provides to end-users of electronic mail services the ability to send
29 or receive electronic mail.
30

31 **b.** “Spam” means unsolicited commercial electronic mail. Spam does not
32 include commercial electronic mail transmitted to a recipient with whom
33 the sender has an existing business or personal relationship.
34
35

1 **C. Computer Trespass [Class 3].**

2
3 **1.** To prove the crime of Computer Trespass, the Tribe must prove beyond a
4 reasonable doubt that the defendant had malicious intent to:

- 5
6 **a.** temporarily or permanently remove, halt, or otherwise disable any
7 computer data, programs or software from a computer or computer network;
8
9 **b.** cause a computer to malfunction, regardless of how long the malfunction
10 persisted;
11
12 **c.** alter, disable, or erase any computer data, programs, or software;
13
14 **d.** effect the creation or alteration of a financial instrument or of an electronic
15 transfer of funds;
16
17 **e.** use a computer or computer network to cause physical injury to the
18 property of another;
19
20 **f.** use a computer or computer network to make or cause to be made an
21 unauthorized copy, in any form, including any printed or electronic form of
22 computer data, programs, or software residing in, communicated by, or produced
23 by a computer or computer network;
24
25 **g.** install or cause to be installed, or collect information through, computer
26 software that records all or a majority of the keystrokes made on the computer of
27 another without the computer owner's authorization; or
28
29 **h.** install or cause to be installed on the computer of another, computer
30 software for the purpose of:
31
32 **i.** taking control of that computer so that can cause damage to
33 another computer; or
34

1 ii. disabling or disrupting the ability of the computer to share or
2 transmit instructions or data to other computers or to any related computer
3 equipment or devices, including printers, scanners, or fax machines.
4

5 **2. Definitions.**
6

7 a. “Computer data” means any representation of information, knowledge,
8 facts, concepts, or instructions that are being prepared or have been prepared and
9 is intended to be processed, is being processed, or has been processed in a
10 computer or computer network. Computer data may be in any form, whether
11 readable only by a computer or only by a human or either.
12

13 b. “Computer program” means an ordered set of data representing coded
14 instructions or statements that, when executed by a computer, causes the
15 computer to perform one or more computer operations.
16

17 c. “Financial instrument” means any instrument relating to financial
18 information or records including, but not limited to, any check, draft, warrant,
19 money order, note, certificate of deposit, letter of credit, bill of exchange, credit or
20 debit card, transaction authorization mechanism, marketable security, or any
21 computerized representation thereof.
22

23 **D. Destruction of Computer Equipment [Class 3].** To prove the crime of Destruction of
24 Computer Equipment, the Tribe must prove beyond a reasonable doubt that:
25

26 1. the defendant intentionally or recklessly tampered with, took, transferred,
27 concealed, altered, or otherwise damaged or destroyed any equipment used in a computer
28 or computer network;
29

30 2. the defendant did so without authorization;
31

32 3. the defendant knew that he or she lacked authorization; and
33

34 4. the result of the damage was \$1,000.00 or greater.
35

1 **E. Theft of Computer Services [Class 4].**

2
3 **1.** To prove the crime of Theft of Computer Services, the Tribe must prove beyond a
4 reasonable doubt that:

5
6 **a.** the defendant accessed or caused to be accessed or otherwise used or
7 caused to be used a computer system; and

8
9 **b.** the defendant had the intent to obtain unauthorized computer services,
10 computer software or data.

11
12 **2. Definitions.**

13
14 **a.** “Computer data” means any representation of information, knowledge,
15 facts, concepts, or instructions that are being prepared or has been prepared and is
16 intended to be processed, is being processed, or has been processed in a computer
17 or computer network. Computer data may be in any form, whether readable only
18 by a computer, only by a human, or by either.

19
20 **b.** “Computer system” means a computer, its software, related equipment and
21 communications facilities, if any, and includes computer networks.

22
23 **F. Unauthorized Access of Computer [Class 4].**

24
25 **1.** To prove the crime of Unauthorized Access of Computer, the Tribe must prove
26 beyond a reasonable doubt that:

27
28 **a.** the defendant knew he or she was not authorized to access the computer;
29 and

30
31 **b.** the defendant accessed or caused a computer or computer system to be
32 accessed.

33
34 **2. Definition.** “Computer system” means a computer, its software, related
35 equipment and communications facilities, if any, and includes computer networks.

1
2
3
4
5 **G. Offense against Computer Users [Class 3].**

6 **1.** To prove the crime of Offense against Computer Users, the Tribe must prove
7 beyond a reasonable doubt that the defendant willfully, knowingly, and without
8 authorization:

9
10 **a.** disrupted, denied or caused the denial of computer system service to an
11 authorized user, which in whole or in part, is owned by, under contract to,
12 operated for, on behalf of or in conjunction with another;

13
14 **b.** introduced any computer contaminant into any computer, computer
15 system, or computer network that prevented an authorized user's access; or
16

17 **c.** caused to be accessed any computer, computer system, or computer
18 network for the purpose of:

19
20 **i.** devising or executing any scheme or artifice to defraud or obtain
21 property;

22
23 **ii.** interrupting or impairing a governmental operation, public
24 communication, transportation or supply of water, gas, or other public
25 service; or

26
27 **iii.** modifying equipment or supplies used or intended to be used in a
28 computer, computer system, or computer network.
29

30 **2.** This offense does not apply to any person who accesses his or her employer's
31 computer system, computer network, computer program, or computer data when acting
32 within the scope of his or her lawful employment.
33
34
35

1 **3. Definitions.**

2
3 **a.** “Access” means to approach, instruct, communicate with, store data in,
4 retrieve data from, or otherwise make use of any resources of a computer,
5 computer system, or computer network.

6
7 **b.** “Computer contaminant” means any set of computer instructions designed
8 to modify, damage, destroy, record, or transmit information within a computer,
9 computer system, or computer network without the intent or permission of the
10 owner of the information. This includes, but is not limited to, viruses or worms
11 that are self-replicating or self-propagating, and are designed to contaminate other
12 computer programs or computer data, consumer computer resources, or in some
13 other way usurp the normal operation of the computer, computer system, or
14 computer network.

15
16
17 **SECTION XX. BURGLARY and TRESPASS**

18
19 **A. Burglary [Class 2].**

20
21 **1.** To prove the crime of Burglary, the Tribe must prove beyond a reasonable doubt
22 that:

23
24 **a.** the defendant entered a structure or conveyance, owned by or in the
25 possession of another;

26
27 **b.** the defendant, upon entering, had the intent to commit another offense in
28 the structure or conveyance; and

29
30 **c.** the defendant was not licensed or invited to enter the structure or
31 conveyance; or if a public area, the premises were not open at the time of
32 entering.

33
34 **2.** If the license or invitation to enter was obtained by the defendant’s trick, fraud, or
35 deceit, then the license or invitation was not valid.

1
2 **3.** If the defendant entered premises that were open to the public, but then entered an
3 area of the premises that the defendant knew was not open to the public, it is a burglary
4 so long as the defendant had the intent to commit another offense in that non-public area.
5

6 **4.** It is not necessary for the Tribe to prove that the defendant's entire body entered
7 the structure or conveyance, it is sufficient that the defendant extend any party of his or
8 her body into it.
9

10 **5.** The crime intended cannot be a trespass.
11

12 **B. Possession of Burglary Tools [Class 3].** To prove the crime of Possession of Burglary
13 Tools, the Tribe must prove beyond a reasonable doubt that the defendant:
14

15 **1.** intended to commit a burglary or a trespass;
16

17 **2.** had in his or her possession a tool, a machine, or an implement that the defendant
18 intended to use, or allow to be used, in the commission of the burglary or trespass; and
19

20 **3.** did some overt act toward the commission of a burglary or trespass.
21

22 **C. Criminal Damage to Property (Vandalism) [Class 4].** To prove the crime of Criminal
23 Damage to Property (Vandalism), the Tribe must prove beyond a reasonable that the defendant
24 either:
25

26 **1.** intentionally or recklessly defaced or damaged the personal or real property of
27 another; or
28

29 **2.** intentionally or recklessly defaced or damaged the real property of the Little
30 Traverse Bay Bands of Odawa Indians.
31

32 **D. Trespass in Structure or Conveyance [Class 4].**
33

34 **1.** To prove the crime of Trespass in a Structure of Conveyance, the Tribe must
35 prove beyond a reasonable doubt that:

- a. the defendant willfully entered or remained in a structure or conveyance;
- b. the structure or conveyance was in the lawful possession of another person; and
- c. the defendant's entering or remaining in the structure or conveyance was without authorization, license, or invitation by any person authorized to give that permission, or the defendant had been authorized, licensed, or invited to enter or remain in a structure or conveyance and the defendant was warned to depart by the person authorized and the defendant refused.

2. Authority to enter or remain in a structure or conveyance does not need to be given in express words. It may be implied from the circumstances that it is lawful to enter or remain in a structure or conveyance of another if, under all the circumstances, a reasonable person would believe that he or she had the permission of the owner or occupant.

3. **Definitions.** "Person authorized" means an owner or lessee, or his or her agent, or any law enforcement officer whose department has received written authorization from the owner or lessee, or his or her agent, to communicate an order to depart the property in case of a threat to public safety or welfare.

SECTION XXI. THEFT and DEALINGS IN STOLEN PROPERTY

A. Theft [Class 2].

1. To prove the crime of Theft, the Tribe must prove beyond a reasonable doubt that the defendant:

- a. knowingly and unlawfully obtained or used, attempted to obtain or to use the property of another; and
- b. did so with the intent to either temporarily or permanently,

1
2 i. deprive another person of his or her right to the property or any
3 benefit from it; or
4

5 ii. appropriate the property of another to his or her own use or to the
6 use of any person not entitled to it.
7

8 **2. Definitions.** “Obtains or uses” means any manner of:
9

10 a. taking or exercising control over property;
11

12 b. making any unauthorized use, disposition, or transfer of property;
13

14 c. obtaining property by fraud, willful misrepresentation of a future act, or
15 false promise; or
16

17 d. conduct previously known as stealing, larceny, purloining, abstracting,
18 embezzlement, misapplication, misappropriation, conversion; or obtaining money
19 or property by false pretenses, fraud, deception; or other conduct similar in nature.
20

21 **B. Fencing [Class 3].**
22

23 **1.** To prove the crime of Fencing, the Tribe must prove beyond a reasonable doubt
24 that the defendant:
25

26 a. trafficked in or attempted to traffic in stolen property; and
27

28 b. knew or should have known that the property was stolen.
29

30 **2.** An inference that the defendant knew or should have known that the property was
31 stolen can be made under the following circumstances:
32

33 a. proof of possession of recently stolen property without a satisfactory
34 explanation;
35

1 **b.** proof of the purchase or sale of stolen property by a dealer in property
2 outside of the regular course of business, without the usual indicia of ownership,
3 and without a satisfactory explanation;

4
5 **c.** proof that a dealer who regularly deals in used property possesses stolen
6 property that has a name and phone number of another person, not the offeror,
7 conspicuously displayed; or

8
9 **d.** proof that a person was in possession of a stolen motor vehicle when the
10 ignition mechanism was bypassed or the steering wheel locking mechanism was
11 broken or bypassed, and without a satisfactory explanation.

12
13 **3. Definitions.**

14
15 **a.** “Stolen property” means property that has been the subject of any
16 criminally wrongful taking or if the property has not been stolen, that it was
17 offered for sale to the defendant as stolen property.

18
19 **b.** “Traffic” means to sell, transfer, distribute, dispense or otherwise dispose
20 of property; and to buy, receive, possess, obtain control of or use property with
21 the intent to sell, transfer, distribute, dispense or otherwise dispose of that
22 property.

23
24 **C. Retail Theft [Class 3].**

25
26 **1.** To prove the crime of Retail Theft, the Tribe must prove beyond a reasonable
27 doubt that the defendant:

28
29 **a.** knowingly took possession of or carried away merchandise; altered or
30 removed a label or price tag from merchandise; transferred merchandise from one
31 container to another; or removed a shopping cart from a merchant’s premises; and

32
33 **b.** intended to deprive the merchant of possession, use, benefit, or full retail
34 value of the merchandise or shopping cart.

1 **2. Definitions.**

2
3 **a.** “Merchandise” means any personal property capable of manual delivery,
4 displayed, held or offered for retail sale by a merchant.

5
6 **b.** “Merchant” means an owner, operator, consignee, employee, lessee or
7 officer of any premises or apparatus used for retail purchase or sale of
8 merchandise.

9
10 **c.** “Value of merchandise” means the sale price of the merchandise at the
11 time it was stolen or otherwise removed depriving the owner of his lawful right to
12 ownership and sale of the item.

13
14
15 **SECTION XXII. CRIMES OF ROBBERY**

16
17 **A. Robbery [Class 2].**

18
19 **1.** To prove the crime of Robbery, the Tribe must prove beyond a reasonable doubt
20 that:

21
22 **a.** the defendant took money or property from another person or custody of
23 another person;

24
25 **b.** the taking was done by force, violence, assault, or otherwise putting the
26 person in fear;

27
28 **c.** the property taken was of some value; and

29
30 **d.** the taking was done with the intent to permanently or temporarily deprive
31 another person of his or her right to the property or any benefit from it; or
32 appropriate the property of another to his or her own use or to the use of any
33 person not entitled to it.
34

1 2. It is not necessary for the Tribe to prove that the person robbed was the actual
2 owner of the property. It is sufficient if the person robbed had custody of the property at
3 the time of the robbery.
4

5 3. It is not necessary that the victim of the robbery be aware or conscious of the
6 robbery. It is sufficient if the defendant causes the victim to be unaware or unconscious
7 for the purpose of taking his or her property.
8

9 4. **Definitions.**
10

11 a. “Force” means some use of physical or verbal threat to overcome any
12 resistance by the victim.
13

14 b. “Taking” means removing property from the victim’s possession by
15 physical force or verbal threat of force.
16

17 **B. Carjacking [Class 2].**
18

19 1. To prove the crime of Carjacking, the Tribe must prove beyond a reasonable
20 doubt that:
21

22 a. the defendant took a motor vehicle from another person;
23

24 b. the taking was done by force, violence, assault or otherwise putting the
25 person in fear; and
26

27 c. the defendant had the intent to temporarily or permanently deprive another
28 person of his or her right to the motor vehicle or any benefit from it; or
29 appropriate the motor vehicle to his or her own use or to the use of any person not
30 entitled to it.
31

32 2. It is not necessary that the victim be the actual owner of the motor vehicle. It is
33 sufficient if the victim has custody of the motor vehicle at the time of the carjacking.
34
35

1 **C. Home-Invasion Robbery [Class 2].**

2
3 1. To prove the crime of Home-Invasion Robbery, the Tribe must prove beyond a
4 reasonable doubt that the defendant:

- 5
6 a. entered the dwelling of another;
7
8 b. intended to commit a robbery at the time of entering the dwelling; and
9
10 c. committed a robbery while inside the dwelling.

11
12 2. **Definition.** “Dwelling” means a building or conveyance of any kind that has a
13 roof over it and is designed to be occupied by people lodging within it at night, together
14 with the space of ground and outbuildings immediately surrounding it.

15
16 **D. Robbery by Sudden Snatching [Class 3].**

17
18 1. To prove the crime of Robbery by Sudden Snatching, the Tribe must prove
19 beyond a reasonable doubt that:

- 20
21 a. the defendant took money or property from the person of the victim;
22
23 b. the property taken was of some value;
24
25 c. the defendant had the intent to permanently or temporarily deprive the
26 owner of the property; and
27
28 d. the victim was aware or became aware of the taking.

29
30 2. It is not necessary for the tribe to prove that the defendant used any amount of
31 force beyond the effort necessary to obtain possession of the money or property, that
32 there was any resistance offered by the victim, or that there was any injury to the victim.

33
34 3. It is not necessary that the victim be the actual owner of the property. It is
35 sufficient that the victim was in possession of the property at the time of the offense.

1
2
3 **SECTION XXIII. FORGERY and WORTHLESS CHECKS**
4

5 **A. Forgery [Class 2].**
6

7 **1.** To prove the crime of Forgery, the Tribe must prove beyond a reasonable doubt
8 that the defendant:

- 9
10 **a.** falsely made, altered, forged, or counterfeited a document; and
11
12 **b.** intended to injure or defraud some person or entity.
13

14 **2.** It is not necessary for the Tribe to prove that the defendant intended to make some
15 profit. It is sufficient that the defendant intended to injure or defraud any person.
16

17 **B. Uttering a Forgery [Class 2].** To prove the crime of Uttering a Forgery, the Tribe must
18 prove beyond a reasonable doubt that the defendant:
19

- 20 **1.** passed or offered to pass as true some document;
21
22 **2.** knew the documents to be false, altered, forged, or counterfeited; and
23
24 **3.** intended to injure or defraud some person or entity.
25

26 **C. Obtaining Property with a Worthless Check [Class 5].**
27

28 **1.** To prove the crime of Obtaining Property with a Worthless Check, the Tribe must
29 prove beyond a reasonable doubt that:

- 30
31 **a.** the defendant drew, made, uttered, issued, or delivered a check;
32
33 **b.** the defendant obtained services, goods, or any other thing of value;
34

1 c. the defendant knew at the time of writing the check that there was not
2 sufficient money on deposit or any arrangement with the bank to pay the check;
3 and
4

5 d. the check was for \$150.00 or more.
6

7 **2. Defenses.** It is a defense to the crime of Obtaining Property with a Worthless
8 Check if either of the following circumstances existed:
9

10 a. the payee knew the defendant did not have sufficient funds at the bank to
11 pay the check; or
12

13 b. the payee had good reason to believe the defendant did not have sufficient
14 funds at the bank to pay the check.
15

16 **D. Obtaining a Signature by Deception [Class 3].** To prove the crime of Obtaining a
17 Signature by Deception, the Tribe must prove beyond a reasonable doubt that the defendant:
18

19 1. obtained the signature of another person on a written instrument;
20

21 2. knowingly misrepresented or omitted any material fact relevant to the instrument
22 or transaction; and
23

24 3. had the intent to defraud.
25
26

27 **SECTION XXIV. PERJURY [and FALSE INFORMATION]** 28

29 **A. Perjury [Class 4].** To prove the crime of Perjury, the Tribe must prove beyond a
30 reasonable doubt that the defendant:
31

32 1. took an oath or affirmation that legally required the defendant to speak the truth;
33 and
34

35 2. knowingly made a false statement.

1
2 **B. False Information to Law Enforcement [Class 3].** To prove the crime of False
3 Information to Law Enforcement, the Tribe must prove beyond a reasonable doubt that:

- 4
5 1. the law enforcement officer was conducting an investigation;
6
7 2. the defendant knew the person conducting the investigation was a law
8 enforcement officer;
9
10 3. the defendant knowingly and willfully gave false information to the law
11 enforcement officer; and
12
13 4. the defendant intended to mislead the law enforcement officer or impede the
14 investigation.
15

16
17 **SECTION XXV. BRIBERY and RELATED CRIMES**

18
19 **A. Bribery of an Official [Class 3].**

20
21 1. To prove the crime of Bribery of an Official, the Tribe must prove beyond a
22 reasonable doubt that:

- 23
24 a. the person bribed was an official;
25
26 b. the defendant gave, offered, or promised the official something of value,
27 benefit, or advantage to the official not authorized by law; and
28
29 c. the gift, offer or promise was made for the purpose of corruptly
30 influencing the official in the performance of some act or omission that:
31
32 i. the defendant believed to be within the official's discretion, in
33 violation of the official's public duty or in performance of the official's
34 public duty; or
35

1 ii. the official represented as being within the official's discretion, in
2 violation of the official's public duty or in performance of the official's
3 public duty.
4

5 **2. Definitions.**
6

7 a. "Corruptly" means acting knowingly and dishonestly for a wrongful
8 purpose.
9

10 b. "Official" means any tribal official, judge, or employee.
11

12 **B. Bribery by an Official [Class 3].**
13

14 1. To prove the crime of Bribery by an Official, the Tribe must prove beyond a
15 reasonable doubt that:
16

17 a. the defendant was an official;
18

19 b. the defendant requested, solicited, accepted, or agreed to accept something
20 of value, benefit or advantage to the official not authorized by law;
21

22 c. the request, solicitation, acceptance, or agreement to accept was made
23 with intent of corruptly being influenced in the performance of some act or
24 omission that:
25

26 i. the person making the bribe believed to be within the official's
27 discretion, in violation of the official's public duty, or in performance of
28 the official's public duty; or
29

30 ii. the defendant represented as being within his or her official
31 discretion, in violation or his or her public duty, or in performance of his
32 or her public duty
33
34
35

1 **2. Definitions.**

2
3 **a.** “Corruptly” means acting knowingly and dishonestly for a wrongful
4 purpose.

5
6 **b.** “Official” means any tribal official, judge or employee.
7

8 **C. Improper Influence of Official [Class 4].** To prove the crime of Improper Influence of
9 an Official, the Tribe must prove beyond a reasonable doubt that the defendant:
10

11 **1.** threatened harm to any tribal official, judge, or employee, and
12

13 **2.** had the intent of influencing that official’s actions.
14

15 **D. Abuse of Office [Class 4].** To prove the crime of Abuse of Office, the Tribe must prove
16 beyond a reasonable doubt that the defendant:
17

18 **1.** acted or purported to act in an official capacity; and
19

20 **2.** subjected another to arrest, detention, search or seizure without just and lawful
21 cause; or maliciously denied or impeded another in the exercise or enjoyment of any
22 right, privilege, power, or immunity.
23

24 **E. Obstruction of Tribal Administration [Class 4].** To prove the crime of Obstruction of
25 tribal Administration, the Tribe must prove beyond a reasonable doubt that the defendant
26 intentionally or knowingly obstructed, impaired, or hindered:
27

28 **1.** any officer of the Little Traverse Bay Bands of Odawa Indians in the lawful
29 exercise of his or her duties;
30

31 **2.** any duly authorized person serving or attempting to serve or execute process or
32 any rule or order of the court of the Little Traverse Bay Bands of Odawa Indians;
33

34 **3.** any judge or other court personnel of the Little Traverse Bay Bands of Odawa
35 Indians, in the lawful exercise of his or her duties; or

- 1
2 4. any other law enforcement official in the lawful exercise of his or her duties.
3
4

5 **SECTION XXVI. FRAUD**
6

7 **A. Fraudulent Practices. [Consumer Fraud and Deceptive Business Practices?]**
8

9 **B. Welfare Fraud [Class 3].**
10

11 1. To prove the crime of Welfare Fraud, the Tribe must prove beyond a reasonable
12 doubt that the defendant:

- 13
14 a. knowingly failed to disclose a material fact by false statement,
15 misrepresentation, impersonation, or other fraudulent means;
16
17 b. knew that fact was used to determine qualifications to receive aid or
18 benefits; and
19
20 c. received aid or benefits from a state or federally [or LTBB/tribal?] funded
21 assistance program.
22

23 2. **Definition.** “Fraudulent” means the intent or purpose of suppressing the truth or
24 perpetrating a deception.
25

26 **C. Fraudulent Use or Possession of Personal Identification Information [Class 3].**
27

28 1. To prove the crime of Fraudulent Use or Possession of Personal Identification
29 Information, the Tribe must prove beyond a reasonable doubt that the defendant:

- 30
31 a. willfully and without authorization fraudulently used or possessed with
32 intent to fraudulently use personal identification information of another; and
33
34 b. used or possessed the information with consent or authorization.
35

1 **2. Definitions.**

2
3 **a.** “Authorization” means empowerment, permission, or competence to act.

4
5 **b.** “Fraudulently” means intentionally or purposely suppressing the truth or
6 perpetrating a deception.

7
8 **c.** “Personal identification information” means any name or number that may
9 be used to identify a specific individual or that individual’s personal information.
10 Such information includes, but is not limited to the following: mail or electronic
11 mail address; telephone number; social security number; date of birth;
12 government issued driver’s license, identification, or passport number; bank
13 issued information; biometric information; medical records; telecommunication
14 identifying information or access; or any other information that can be used to
15 access a person’s financial resources.

16
17 **D. Fraudulent Creation, Use or Possession of Counterfeit Personal Identification**
18 **Information [Class 3].** To prove the crime of Fraudulent Creation, Use or Possession of
19 Counterfeit Personal Identification Information, the Tribe must prove beyond a reasonable doubt
20 that:

21
22 **1.** the defendant willfully and fraudulently created, used or possessed with intent to
23 use counterfeit or fictitious personal identification information;

24
25 **2.** the personal identification information concerned a fictitious individual,
26 concerned a real individual who did not consent, or concerned a real individual who
27 unlawfully gave the information to the defendant; and

28
29 **3.** the defendant created, used, or possessed the information with the intent to
30 commit or facilitate the commission of a fraud on another person.

31
32 **E. Criminal Impersonation [Class 3].** To prove the crime of Criminal Impersonation, the
33 Tribe must prove beyond a reasonable doubt that the defendant:

34
35 **1.** assumed a false identity with the intent to defraud another; or

2. pretended to be a representative of some person or organization with the intent to defraud.

F. False Identification to Procure a Tribal Natural Resource License [Class 5]. To prove the crime of Falsification of Identification to Procure a Tribal Natural Resource License, the Tribe must prove beyond a reasonable doubt that the defendant:

1. intentionally presented false identification information; and
2. did so with the purpose of obtaining a natural resource license or permit that the defendant would not otherwise be entitled to.

SECTION XXVII. OBSTRUCTION OF JUSTICE

A. Resisting an Officer with Violence [Class 2]. To prove the crime of Resisting an Officer with Violence, the Tribe must prove beyond a reasonable doubt that:

1. the defendant knowingly and willfully resisted, obstructed, or oppose the officer by offering to do or doing violence to the officer;
2. at the time, the officer was engaged in the execution of legal process or lawful execution of a legal duty; and
3. the officer was a person legally authorized to execute process.

B. False Report of Commission of Crime [Class 3]. To prove the crime of False Report of Commission of Crime, the Tribe must prove beyond a reasonable doubt that:

1. the defendant willfully gave, said, or caused to be given or said false information or a report about the alleged commission of a crime under the laws of the Little Traverse Bay Bands of Odawa Indians;

2. the defendant knew the information or report was false because no such crime had actually been committed;

3. the information or report was given, said or caused to be given or said to a law enforcement officer; and

4. the defendant knew or should have known that he or she was giving information to a law enforcement officer.

C. Malicious Criminal Prosecution [Class 3]. To prove the crime of Malicious Criminal Prosecution, the Tribe must prove beyond a reasonable doubt that the defendant:

1. maliciously caused or attempted to cause a criminal charge to be prosecuted against an innocent person; and

2. knew that the person being prosecuted was innocent.

D. Giving False Information Concerning the Commission of a Crime [Class 4]. To prove the crime of Giving False Information Concerning the Commission of a Crime, the Tribe must prove beyond a reasonable doubt that the defendant:

1. knowingly gave information about the alleged commission of a crime;

2. knew the information was false;

3. gave the false information to a law enforcement officer; and

4. knew that the person was a law enforcement officer.

E. Giving a False Name or Identification to a Law Enforcement Officer Adversely Affecting Another [Class 4]. To prove the crime of Giving a False Name or Identification to a Law Enforcement Officer Adversely Affecting Another, the Tribe must prove beyond a reasonable doubt that:

1. the defendant was arrested or lawfully detained by a law enforcement officer;

1
2 2. the defendant gave a false name or falsely identified himself or herself in some
3 way as another to the law enforcement officer; and
4

5 3. the other person was adversely affected by the unlawful use of his or her name or
6 identification.
7

8 **F. Tampering with or Fabricating Physical Evidence [Class 3].** To prove the crime of
9 Tampering with or Fabricating Physical Evidence, the Tribe must prove beyond a reasonable
10 doubt that the defendant:
11

12 1. knew that a criminal trial, proceeding, or an investigation by a duly constituted
13 prosecuting authority, law enforcement agency, or legislative committee of the Little
14 Traverse Bay Bands of Odawa Indians was pending or about to be instituted; and
15

16 2. altered, destroyed, concealed, or removed any record, document, or other item
17 with the purpose to impair its verity or availability in the investigation or proceeding; or
18 made, presented, or used any record, document, or other item knowing it to be false.
19

20 **G. Tampering with a Public Record [Class 3].**
21

22 1. To prove the crime of Tampering with a Public Record, the Tribe must prove
23 beyond a reasonable doubt that the defendant intentionally or knowingly and without
24 property authority:
25

26 a. made or completed a written instrument that purported to be a public
27 record or true copy;
28

29 b. altered a written instrument that is a public record or true copy;
30

31 c. presented or used a written instrument that was or purported to be a public
32 record or true copy, knowing that it had been falsely made, completed, or altered
33 with intent that it be taken as genuine;
34

1 d. offered for recording, registration or filing in a tribal office or agency a
2 written statement knowing that it had been falsely made, completed, or altered or
3 that it contained a false state of information; or
4

5 e. knowingly destroyed, concealed, removed, or other wise impaired the
6 availability of any public record.
7

8 2. Definition. "Public record" means all official books, papers, written instruments
9 or records created, issued, received or kept by any tribal office, branch or division of the
10 Little Traverse Bay Bands of Odawa Indians.
11

12 **H. Interfering with an Election [Class 2].** To prove the crime of Interfering with an
13 Election, the Tribe must prove beyond a reasonable doubt that:
14

15 1. the defendant knowingly attempted to influence the vote of any person, or
16 prevented a person from voting in an election held by the Little Traverse Bay Bands of
17 Odawa Indians through the use or threatened use of force or violence; or
18

19 2. attempted to cast more than one vote in an election, or in any way interfered with
20 the collection and counting of ballots.
21

22 23 **SECTION XXVIII. GAMBLING**

24 25 **A. Gambling [Class 3].**

26
27 1. To prove the crime of Gambling, the Tribe must prove beyond a reasonable doubt
28 that the defendant:
29

30 a. played or engaged in a game of chance;
31

32 b. risked money or property on the outcome of the game; and
33

34 c. expected to gain or lose money or property as a result of the game.
35

2. It is not necessary for the Tribe to prove that the defendant risked his or her own money.

B. Maintaining a Gambling Establishment [Class 2].

1. To prove the crime of Maintaining a Gambling Establishment, the Tribe must prove beyond a reasonable doubt that:

a. the defendant either in person, by servant, or by agent; or acting as a servant, clerk, agent, or employee of another;

b. the defendant had a substantial degree of control over and kept or maintained the place where the gambling occurred or articles used for gambling purposes; and

c. the place was or the articles were habitually kept or maintained for the purpose of gambling.

2. It is not necessary for the Tribe to prove that the defendant gambled, received any profit from the gambling, or that the defendant owned or controlled the property.

3. **Definition.** “Gambling” means a game of chance where the participant risks money or property on the outcome of the game with the expectation of gaining or losing money or property.

C. Permitting Gambling [Class 2].

1. To prove the crime of Permitting Gambling, the Tribe must prove beyond a reasonable doubt that the defendant:

a. either in person, by servant, or by agent; or acting as a servant, clerk, agent, or employee;

b. had direct or indirect charge, control, or management of the place where the gambling occurred; and

1
2 c. habitually solicited or knowingly permitted gambling at that place.
3

4 2. It is not necessary for the tribe to prove that the defendant had sole and exclusive
5 control or management of the place. It is sufficient that the control or management was
6 exercised jointly with others. However, the defendant must have had sufficient control or
7 management of the place to carry some authority to deny or forbid gambling in the place.
8

9 3. **Definition.** “Gambling” means a game of chance where the participant risks
10 money or property on the outcome of the game with the expectation of gaining or losing
11 money or property.
12
13

14 SECTION XXIX. DRUG ABUSE 15

16 A. Possession, Use, Sale, Manufacture, or Distribution of a Controlled Substance [Class 17 4]. 18

19 1. To prove the crime of Possession, Use, Sale, Manufacture, or Distribution of a
20 Controlled Substance, the Tribe must prove beyond a reasonable doubt that:
21

22 a. the defendant possessed, used, sold, purchased, manufactured, or
23 distributed a controlled substance; or possessed with the intent to sell, distribute,
24 or manufacture a controlled substance; and
25

26 b. the defendant had knowledge of the presence of the controlled substance.
27

28 2. Definitions. 29

30 a. “Deliver” means the actual, constructive, or attempted transfer from one
31 person to another of a controlled substance.
32

33 b. “Manufacture” means the production, preparation, packaging, labeling,
34 compounding, cultivating, growing, conversion or processing of a controlled
35 substance, either directly or indirectly. This includes the extraction from

substances of natural origin, or independently by means of chemical synthesis, and by a combination of the two.

c. “Possess” means to have actual or constructive personal charge of or to exercise the right of ownership, management, or control over the thing possessed.

i. “Actual possession” means the controlled substance is in the hand of or on the person, in a container in the hand of or on the person, or is so close to be within ready reach and is under the control of the person.

ii. “Constructive possession” means the controlled substance is in a place over which the defendant has control or in which the defendant has concealed it.

d. “Sell” means to transfer or deliver something to another person in exchange for money, something of value, or a promise to pay money or give something of value.

B. Trafficking of Controlled Substances [Class 2]. To prove the crime of Trafficking of Controlled Substances, the Tribe must prove beyond a reasonable doubt that:

1. the defendant knowingly sold, purchased, manufactured, delivered, possessed, or brought into the reservation area of the Little Traverse Bay Bands of Odawa Indians, a controlled substance or mixture containing a controlled substance;

2. the substance was a controlled substance as defined or described in the Uniform Controlled Substances Act, 21 U.S.C. Section 812, as updated;

3. the quantity of the substance involved was [four grams or more]; and

4. the defendant knew that the substance was a controlled substance.

C. Unlawful Sale, Manufacture, Alteration, Delivery, Uttering, or Possession of Counterfeit-Resistant Prescription Blanks for Controlled Substances [Class 4].

1 **1.** To prove the crime of Unlawful Sale, Manufacture, Alteration, Delivery, Uttering,
2 or Possession of Counterfeit-Resistant Prescription Blanks for Controlled Substances, the
3 tribe must prove beyond a reasonable doubt that:

4
5 **a.** the defendant sold, manufactured, altered, delivered, uttered, or possessed
6 any counterfeit-resistant prescription blanks for controlled substances;

7
8 **b.** the counterfeit-resistant prescription blanks for controlled substances were
9 in the form and content established by the [Department of Health – Michigan or
10 LTBB]; and

11
12 **c.** the defendant intended to injure or defraud any person, or to facilitate the
13 use of the counterfeit-resistant prescription blanks.

14
15 **2. Definitions.** “Utter” means to pass, present, or publish.
16
17

18 **SECTION XXX. RACKETEERING**

19
20 **A. Racketeer Influenced and Corrupt Organizations Act (RICO). [cite reference?]**

21
22 **B. Use or Investment of Proceeds from Pattern of Racketeering Activity [Class 2].**

23
24 **1.** To prove the crime of Use or Investment of Proceeds from a Pattern of
25 Racketeering Activity, the Tribe must prove beyond a reasonable doubt that at least two
26 of the following incidents occurred:

27
28 **a.** the defendant participated in two or more criminal incidents that had the
29 same or similar intents, results, accomplices, victims, or methods of commission
30 or were interrelated by distinguishing characteristics and were not isolated
31 incidents;

32
33 **b.** the defendant had criminal intent and received proceeds that were derived
34 directly or indirectly from such incidents; or
35

1 c. the defendant used or invested some of the proceeds either directly or
2 indirectly in acquiring some right, title, equity or interest in real property or in
3 establishing or operating an enterprise.
4

5 **2. Definition.** “Receiving proceeds with criminal intent” means that the defendant,
6 at the time of receiving the proceeds, either knew the source of the proceeds or had
7 suspicions aroused, but deliberately failed to make further inquiry as to the source of the
8 proceeds.
9

10 **C. Use or Investment of Proceeds from Collection of Unlawful Debt [Class 2].**
11

12 **1.** To prove the crime of Use or Investment of Proceeds from Collection of Unlawful
13 Debt, the Tribe must prove beyond a reasonable doubt that the defendant:
14

15 a. had criminal intent when he or she received proceeds that were derived
16 directly or indirectly from the collection of an unlawful debt; and
17

18 b. used or invested some of the proceeds either directly or indirectly in
19 acquiring some right, title, equity, or interest in real property; or in establishing or
20 operating an enterprise.
21

22 **2. Definitions.**
23

24 a. “Receiving proceeds with criminal intent” means that the defendant, at the
25 time of receiving the proceeds, either knew the source of the proceeds or had
26 suspicions around, but deliberately failed to make further inquiry as to the source
27 of the proceeds
28

29 b. “Real property” means land, anything erected on it, and any interest in it.
30

31 c. “Enterprise” means an ongoing organization, formal or informal, that both
32 functions a continuing unit and has a common purpose of engaging in a course of
33 conduct.
34

1 **D. Acquisition or Maintenance through Pattern of Racketeering Activity [Class 2].** To
2 prove the crime of Acquisition or Maintenance through a Pattern of Racketeering Activity, the
3 Tribe must prove beyond a reasonable doubt that:

4
5 1. the defendant was engaged in two or more criminal incidents that had the same or
6 similar intents, results, accomplices, victims, or methods of commission, or were
7 interrelated by distinguishing characteristics and were not isolated incidents; and

8
9 2. the defendant acquired, as a result of the criminal incidents, directly or indirectly,
10 an interest in or control of an enterprise or real property.

11
12 **E. Acquisition or Maintenance through Collection of Unlawful Debt [Class 2].** To prove
13 the crime of Acquisition or Maintenance through Collection of Unlawful Debt, the Tribe must
14 prove beyond a reasonable doubt that the defendant:

15
16 1. acquired or maintained, directly or indirectly, an interest in or control of an
17 enterprise or real property; and

18
19 2. did so through the knowing collection of an unlawful debt.

20
21 **F. Conduct of or Participation in an Enterprise through Collection of Unlawful Debt**
22 **[Class 3].** To prove the crime of Conduct of or Participation in an Enterprise through Collection
23 of an Unlawful Debt, the Tribe must prove beyond a reasonable doubt that the defendant:

24
25 1. was employed by or associated with an enterprise; and

26
27 2. conducted or participated in, directly or indirectly, such enterprise through the
28 knowing collection of an unlawful debt.

29
30 **G. Conduct of or Participation in an Enterprise through a Pattern of Racketeering**
31 **Activity [Class 3].** To prove the crime of Conduct of or Participation in an Enterprise through a
32 Pattern of Racketeering Activity, the Tribe must prove beyond a reasonable doubt that:

33
34 1. the defendant was employed by or associated with an enterprise;

- 1 2. the defendant conducted or participated in, directly or indirectly, such enterprise
2 by engaging in two or more criminal incidents; and
3
4 3. the criminal incidents had the same or similar intents, results, accomplices,
5 victims, or methods of commission; or were interrelated by distinguishing characteristics
6 and were not isolated incidents.
7

8 **H. Conspiracy to Engage in Pattern of Racketeering Activity [Class 3].**
9

10 1. To prove the crime of Conspiracy to Engage in Pattern of Racketeering Activity,
11 the Tribe must prove beyond a reasonable doubt that:

12
13 a. two or more persons, in some manner, came to a mutual understanding to
14 try to accomplish a common and unlawful racketeering plan;
15

16 b. the defendant knowingly and willfully became a member of the
17 conspiracy; and
18

19 c. the defendant joined the conspiracy with the specific intent either to
20 personally engage in at least two incidents of racketeering, or specifically
21 intended to otherwise participate in the affairs of the enterprise with the
22 knowledge and intent that the other members of the conspiracy would engage in
23 at least two incidents of racketeering as part of a pattern of racketeering activity.
24

25 2. It is not necessary for the Tribe to prove that the defendant had full knowledge of
26 all the details of the unlawful scheme or the names and identities of all other alleged
27 conspirators. It is sufficient that the defendant had an understanding of the unlawful
28 nature of the plan and knowingly and willfully joined in that plan.
29

30 3. **Definitions.**
31

32 a. “Conspiracy” means an agreement between two or more persons joined
33 together in an attempt to accomplish an offense that would be in violation of the
34 law.
35

1 **b.** “Pattern of racketeering activity” means engaging in at least two incidents
2 of racketeering conduct that have the same or similar intents, results, accomplices,
3 victims, or methods of commission; or that otherwise are interrelated by
4 distinguishing characteristics and are not isolated incidents.
5

6 **4. Defense.** It is a defense to the crime of Conspiracy to Engage in a Pattern of
7 Racketeering Activity that the defendant, after knowingly entering into a conspiracy with
8 one or more persons, later persuaded those persons not to engage in such activity or
9 otherwise prevented commission of the offense. However, a mere attempt to dissuade one
10 from engaging in the criminal activity is insufficient.
11

12

13 **SECTION XXXI. ESCAPE**

14

15 **A. Escape [Class 3].** To prove the crime of Escape, the Tribe must prove beyond a
16 reasonable doubt that the defendant:
17

18 **1.** was under arrest and in the lawful custody of a law enforcement official; or was
19 convicted of a crime and sentenced to a term of imprisonment and committed to a
20 [detention center, correctional facility, jail, prison] by a court;
21

22 **2.** was confined as a prisoner at the [detention center, correctional facility, jail,
23 prison], was being transported to or from a place of confinement, or was working on a
24 public road; and
25

26 **3.** escaped or attempted to escape with intent to avoid lawful confinement.
27

28 **B. Helping a Person Escape from Lawful Custody [Class 4].** To prove the crime of
29 Helping a Person Escape from Lawful Custody, the Tribe must prove beyond a
30 reasonable doubt that:
31

32 **1.** the defendant helped or attempted to help another escape; and
33

34 **2.** the other person was in lawful custody.
35

1
2 **SECTION XXXII. TRANSPORTATION OFFENSES**
3

4 **A. Driving under the Influence [Class 4].** To prove the crime of Driving under the
5 Influence, the Tribe must prove beyond a reasonable doubt that:
6

- 7 **1.** the defendant drove or was in actual physical control of a vehicle within the
8 territorial jurisdiction of the Little Traverse Bay Bands of Odawa Indians; and
9
10 **2.** the defendant, while driving or while in actual physical control of the vehicle,
11
12 **a.** was under the influence of an alcoholic beverage, a chemical substance, or
13 a controlled substance to the extent that his or her normal faculties were impaired;
14 or
15
16 **b.** had a blood or breath –alcohol level of .08 or more grams of alcohol per
17 100 milliliters of blood or 210 liters of breath.
18

19 **B. Driving with a Loaded Firearm [Class 5].** To prove the crime of Driving with a Loaded
20 Firearm, the Tribe must prove beyond a reasonable doubt that:
21

- 22 **1.** the defendant was operating a motor vehicle; and
23
24 **2.** there was a loaded firearm present in the vehicle.
25

26 **C. Fleeing to Elude a Law Enforcement Officer [Class 4].**
27

- 28 **1.** To prove the crime of Fleeing to Elude a Law Enforcement Officer, the Tribe
29 must prove beyond a reasonable doubt that:
30
31 **a.** the defendant was operating a motor vehicle upon a street or highway
32 within the territorial jurisdiction of the Little Traverse Bay Bands of Odawa
33 Indians;
34

1 **b.** a duly authorized law enforcement officer ordered the defendant to stop or
2 remain stopped;

3
4 **c.** the defendant knew he or she was ordered to stop by a duly authorized law
5 enforcement officer; and

6
7 **d.** the defendant willfully refused or failed to stop the vehicle in compliance
8 with the order; or stopped the vehicle, then willfully fled in a vehicle in an attempt
9 to elude the officer.

10
11 **2. Definition.** “Operating” means a person is in actual physical control of a motor
12 vehicle upon the street or highway or who is exercising control over or steering a vehicle
13 being towed by a motor vehicle.

14
15 **D. Refusal to Submit to Testing [Class 5].**

16
17 **1.** To prove the crime of Refusal to Submit to Testing, the Tribe must prove beyond
18 a reasonable doubt that:

19
20 **a.** the law enforcement officer had probable cause to believe the defendant
21 drove, or was in actual physical control of a motor vehicle while under the
22 influence of an alcoholic beverage or a controlled substance to the extent that the
23 defendant’s normal faculties were impaired;

24
25 **b.** the law enforcement officer arrested the defendant for Driving under the
26 Influence, or requested a blood or breath test;

27
28 **c.** the defendant was informed that a refusal to submit to the test could lead
29 to the suspension of the defendant’s privilege to operate a motor vehicle;

30
31 **d.** the defendant, after being informed, refused to submit to the test when
32 requested to do so by a law enforcement or correctional officer; and

33
34 **e.** [the defendant’s driving privilege had been previously suspended for a
35 prior refusal to submit to a lawful test of his or her breath, blood, or urine. – is this

an “and” or is this an aggravating circumstance warranting a more severe punishment?]

2. Definitions.

a. “Actual physical control” means physically in or on the motor vehicle and having the capability to operate the motor vehicle, regardless of whether the person is actually operating the vehicle at the time.

b. “Probable cause” exists where the totality of the circumstance, from the perspective of the law enforcement officer’s knowledge, training, and experience, gave the officer reasonable grounds and a fair probability to believe that a crime had been committed.

E. Boating under the Influence [Class 4].

1. To prove the crime of Boating under the Influence, the Tribe must prove beyond a reasonable doubt that:

a. the defendant operated a vessel; and

b. the defendant, while operating the vessel, was under the influence of alcoholic beverages, a chemical substance, or a controlled substance to the extent that his or her normal faculties were impaired; or had a blood or breath alcohol level of .08 or more grams of alcohol per 100 milliliters of blood or 210 liters of breath.

2. Defense. It is a defense to Boating under the Influence if the vessel was inoperable at the time of the alleged offense, unless the defendant was controlling or steering the vessel while it was being towed by another vessel. It is not a defense if the defendant was boating under the Influence before the vessel became inoperable.

1 **3. Definitions.**

2
3 **a.** “Alcoholic beverages” means any kind of beverage that contains any
4 amount of alcohol.

5
6 **b.** “Operate” means to be in charge of, in command of, or in actual physical
7 control of a vessel upon the waters of [this state or within the jurisdiction of
8 LTBB]; or to exercise control over, or to have responsibility for a vessel’s
9 navigation or safety while the vessel is underway upon the water of [the State of
10 Michigan or within the jurisdiction of LTBB]; or to control or steer a vessel being
11 towed by another vessel.

12
13
14 **SECTION XXXIII. MISCELLANEOUS CRIMES**

15
16 **A. Disorderly Intoxication [Class 5].**

17
18 **1.** To prove the crime of Disorderly Intoxication, the Tribe must prove beyond a
19 reasonable doubt that the defendant:

20
21 **a.** was intoxicated, and endangered the safety of another person, property, or
22 was unable to care for his or her own safety; or

23
24 **b.** was intoxicated or drank any alcoholic beverage in a public place or upon
25 a public conveyance, and caused a public nuisance or disturbance.

26
27 **2. Definitions.**

28
29 **a.** “Intoxication” means that the defendant must have been so affected from
30 the drinking of an alcoholic beverage as to have lost or been deprived of the
31 normal control of his or her faculties.

32
33 **b.** “Public place” means a place where the public has a right to be.

1 **B. Contributing to the Delinquency of a Minor [Class 5].** To prove the crime of
2 Contributing to the Delinquency of a Minor, the Tribe must prove beyond a reasonable doubt
3 that:

4
5 1. the defendant aided, abetted, or encouraged any minor to commit an act that
6 would be an offense under this Statute; and

7
8 2. the defendant was an adult.
9

10 **C. Furnishing Alcohol to a Person under twenty one (21) Years of Age [Class 5].** To
11 prove the crime of Furnishing Alcohol to a Person under twenty one (21) Years of Age, the Tribe
12 must prove beyond a reasonable doubt that:

13
14 1. the defendant knowingly furnished, purchased, provided, or in any way procured
15 an alcoholic beverage; and

16
17 2. the defendant did so for the possession or consumption by a person under twenty
18 one (21) years of age.
19

20 **D. Allowing a Person under twenty one (21) Years of Age to Consume Alcohol [Class**
21 **5].** To prove the crime of Allowing a Person under twenty one (21) Years of Age to Consume
22 Alcohol, the Tribe must prove beyond a reasonable doubt that:

23
24 1. the defendant knowingly allowed a person under the age of twenty one (21) years
25 to consume alcohol; and

26
27 2. the person under twenty one (21) years consumed the alcohol at the defendant's
28 residence, in the defendant's vehicle, or otherwise in the defendant's presence.
29

30 **E. Possession or Consumption of Alcohol by a Person under twenty one (21) Years of**
31 **Age [Class 5].** To prove the crime of Possession or Consumption of Alcohol by a Person under
32 twenty one (21) Years of Age, the Tribe must prove beyond a reasonable doubt that:

33
34 1. the defendant was under twenty one (21) years of age; and
35

2. the defendant knowingly possessed or consumed any alcoholic beverage.

F. Sale of Alcohol without a License [Class 4]. To prove the crime of Sale of Alcohol without a License, the Tribe must prove beyond a reasonable doubt that:

1. the defendant did not have a valid license under the laws of the State of Michigan [or the laws of the Little Traverse Bay Bands of Odawa Indians] to sell alcohol; and

2. the defendant did one of the following:

a. sold alcohol; or

b. possessed alcohol with the intent to sell it.

G. Disorderly Conduct [Class 5]. To prove the crime of Disorderly Conduct, the Tribe must prove beyond a reasonable doubt that the defendant intentionally, knowingly, and recklessly:

1. engaged in fighting or provoked a fight;

2. made any protracted commotion that prevented the transaction of the business of a lawful meeting, gathering, or procession;

3. made loud and unreasonable noise; or

4. engaged in the consumption of alcohol out of doors with two or more people without a Tribal permit.

H. Loitering or Prowling [Class 5]. To prove the crime of Loitering or Prowling, the Tribe must prove beyond a reasonable doubt that:

1. the defendant loitered or prowled in a place, at a time, or in a manner unusual for law-abiding individuals; and

2. the loitering or prowling was under circumstances that warranted justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.

I. Cruelty to Animals [Class 3].

1. To prove the crime of Cruelty to Animals, the Tribe must prove beyond a reasonable doubt that the defendant:

- a. overloaded, overdrove, tormented, mutilated, or killed an animal;
- b. deprived an animal of necessary sustenance or shelter;
- c. carried an animal in or upon a vehicle, or otherwise in a cruel and inhumane manner; or
- d. instigated any fight or combat between two or more animals, or between animals and humans.

2. Definitions.

- a. "Animal" means all mammals, birds, reptiles, and fish. This does not include any mammals, birds, reptiles, or fish that are hunted by someone that has a valid permit from either the State of Michigan or the Little Traverse Bay Bands of Odawa Indians.
- b. "Torment" means any act, omission, or neglect that results in unnecessary or unjustifiable pain or suffering that is caused, permitted, or allowed to continue.

J. Dumping of Hazardous Material [Class 4].

1. To prove the crime of Dumping Hazardous Material, the Tribe must prove beyond a reasonable doubt that:

1 a. the defendant threw, placed, dropped, or otherwise disposed of hazardous
2 material; and

3
4 b. the defendant did so at a place that is not a lawful disposal site for such
5 hazardous materials.

6
7 **2. Definitions.**

8
9 a. “Hazardous material” means any substance or material that could
10 adversely affect the safety of the public, handlers, or carriers during
11 transportation.

12
13 b. “Lawful disposal site” means a site specifically designated for the disposal
14 of hazardous material as designated by the [Natural Resource Department of the
15 Little Traverse Bay Bands of Odawa Indians].

16
17 **K. Riot [Class 4].** To prove the crime of Riot, the Tribe must prove beyond a reasonable
18 doubt that:

19
20 1. the defendant was with five or more persons acting together;

21
22 2. the defendant intentionally, knowingly, or recklessly used force or violence, or
23 threatened to use force or violence; and

24
25 3. the defendant’s actions disturbed the public peace.

26
27 **L. Youth and Tobacco [Class 4].**

28
29 1. To prove the crime of Youth and Tobacco, the Tribe must prove beyond a
30 reasonable doubt that:

31
32 a. the defendant was a minor and had possession, used, or purchased tobacco
33 or tobacco products; or

b. the defendant allowed a minor to possess, use, or purchase tobacco or tobacco products.

2. Defense. It is a defense to the crime of Youth and Tobacco, if the defendant possessed or used the tobacco in furtherance of a recognized tribal or religious purpose.

CERTIFICATION